

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

W. P. No. 1821 of 2002 (S/B)

Bhoop Singh		Petitioners.
	Versus	
Joint Director of Education, Nainital & others		Respondents.

Mr. S.S. Yadav, learned counsel for the petitioner.
Mr. Manoj Tiwari, learned counsel for respondent No. 3.
Learned Standing Counsel for the State.

Hon'ble P.C. Verma, A.C.J.

This writ petition has been filed by the petitioner seeking a writ of certiorari to quash the impugned order dated 23.11.2002, which is contained in Annexure 3 to the writ petition, by which the petitioner has been directed by the Basic Shiksha Adhikari, Udham Singh Nagar to hand over the charge of Head Master to Km. Uma Upadhyaya, who has been declared senior by Basic Shiksha Adhikari, Nainital.

Heard Mr. S.S. Yadav, learned counsel for the petitioner and Mr. Manoj Tiwari, learned counsel for the respondent No.3.

A tentative seniority list was published in which Km. Uma Upadhyaya is shown to have been appointed in the year 1992 and Bhoop Singh i.e. the petitioner is shown to have been appointed in the year 1973. But in the tentative seniority list Km. Uma Upadhyaya was shown at serial No. 1. Against this, the objection was filed by the petitioner claiming his seniority from the date of his initial appointment, which is contained in Annexure 6 to the writ petition.

A final seniority list was prepared by the Zila Basic Shiksha Adhikari, Nainital, which is contained in Annexure CA 6 to the counter affidavit filed on behalf of respondent No. 3, in which only the name of Km. Uma Upadhyaya is shown. It is written in the last portion of the order that this is also tentative because after the receipt of the instructions from the State Government, rest of the names shall be mentioned. The objection of the petitioner has been rejected by the Zila Basic Shiksha Adhikari, Nainital on the ground that the

petitioner namely Bhoop Singh and another teacher Shri Rajveer Singh were appointed on 8.12.1973 and 12.10.1983 under reorientation scheme as Extension Teacher. The said scheme came to end in 1993. Thereafter, they were adjusted in the regular cadre. The pay scale of the petitioner was retained as the same as he was getting as Extension Teacher. The petitioner is at the verge of retirement.

Admittedly, Km. Uma Upadhyaya was appointed in the year 1992. she has been held senior on the ground that she became the member of service of CT Grade Teachers in 1992 while the petitioner and Rajveer Singh became members of service in 1993 after the scheme was abolished and they were taken into the cadre.

So far as the appointments of the petitioner and Rajveer Singh are concerned, it is not disputed that they were appointed on 8.12.1973 and 12.10.1983 respectively. It has also not been said that they were appointed without following the procedure prescribed for their appointment in the scheme. Learned counsel for the respondent fairly submitted that there is no rule for appointment of Teachers under Reorientation and Extension Scheme, the procedure is given in the Scheme itself and the petitioner was appointed accordingly.

Learned counsel for the respondent No. 3 submitted that since the petitioner was admitted on ex-cadre post and after the abolition of the Scheme in the year 1993, the petitioner is accommodated in the cadre of CT Grade teachers, therefore, the seniority cannot be reckoned from the date of his initial appointment. Learned counsel for the respondent No. 3 further submitted that rule for determining the seniority in the Cadre of CT Grade teachers is the date of substantive appointment on a cadre post and the services rendered on ex-cadre post cannot be taken into account for reckoning of the seniority.

In the case of Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra and others reported in (1990) 2 Supreme Court Cases 715, in para no. 13, the Constitution Bench of the Apex Court observed as under:

“..... The principle for deciding inter seniority has to conform to the principles of equality spelt out by Article 14 and 16. If an appointment is made by way of stop gap arrangement, without considering the claims of all the eligible available persons and without following the rules of appointment, the experience on such appointment cannot be equated with the experience of regular appointee, because of the qualitative difference in the appointment. To equate the two would be to treat two unequal as equal, which would violate the equality clause. But if the appointment is made after considering the claims of all eligible candidates and the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules made for regular substantive appointments, there is no reason to exclude the officiating service for purpose of seniority. Same will be the position if the initial appointment itself is made in accordance with the rules applicable to substantive appointments as in the present case. To hold otherwise will be discriminatory and arbitrary. This principle has been followed in innumerable cases and has been further elaborated by this Court in several judgments including those in Bageshwar Dass Vs. State of U.P. and Delhi Water Supply and Sewage Disposal Committee Vs. R.K. Kashyap with which we are in agreement. In Narender Chadha Vs. Union of India, the officers were promoted although without following the procedure prescribed under the rules, but they continuously worked for long period of nearly 15-20 years on the posts without being reverted. The period of their continuous officiation was directed to be counted for seniority as it was held that any other view would be arbitrary and violative of Article 14 and 16. There is considerable force in this view also. We, therefore, confirm the principle of counting towards seniority the period of continuous officiation following an appointment made in accordance with the rules prescribed for regular substantive appointments in the service.”

In para 47 of the above judgment, the Apex Court concluded authoritatively in clause (B) as under:

“.....(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularization of his services in accordance with rules, the period of officiating service will be counted.”

In the present case, the petitioner has been continuously serving since 1973 and now is at the verge of retirement. Therefore, in view of the law laid down by the Apex Court as quoted above, the petitioner is entitled for counting of the period of service rendered on ex-cadre post for the purpose of reckoning of his seniority. Thus, the seniority of respondent No. 3 is contrary to the law laid down by the Apex Court, which is the law of the land under Article 141 of the Constitution of India. Therefore, petitioner is held senior to respondent No. 3. It is noteworthy that the tentative seniority list, which is said to be final, by which the respondent No. 3 has been held to be senior, is also tentative and while keeping the seniority list to be tentative, it was not open for the Zila Basic Shiksha Adhikari to have rejected the application of the petitioner without finalizing the seniority of the petitioner. The intention of the Zila Basic Shiksha Adhikari does not appear to be fair. The order suffers from legal malice and is liable to be ignored and is, hereby, Ignored.

For the reasons stated above, the writ petition is allowed and the order dated 23.11.2002 contained in Annexure 3 to the writ petition, by which the petitioner has been directed by the Basic Shiksha Adhikari, Udham Singh Nagar to hand over the charge of Head Master to Km. Uma Upadhyaya cannot be sustained and is, hereby, quashed.

(P.C. Verma, A.C.J.)

Dt. 16.06.2004

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